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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 PAUL SANDERSON,

8 Petitioner,

9 v.

10 STATE OF WASHINGTON,

Respondent.

Case No. C19-5395 RBL-TLF

ORDER TO SHOW CAUSE BY JULY
8, 2019, REGARDING WHY COURT
SHOULD NOT ORDER DISMISSAL
WITHOUT PREJUDICE UNDER 28
U.S.C. § 2254, RULE 4

11 Petitioner Paul Sanderson, who is proceeding *pro se*, filed a Petition for Writ of Habeas
12 Corpus pursuant to 28 U.S.C. § 2254. Dkt. 6. Petitioner challenges his 2018 conviction and
13 sentence for Assault of a Child in the Second Degree and Distribution of Controlled Substance to
14 a Person under 18 in Kitsap County Superior Court, No. 17-1-00666-0 and No. 18-1-00780-18.
15 *Id.* The petition has not been served on respondent.

16 Under Rule 4 of the rules governing § 2254 petitions, the Court must promptly examine a
17 habeas petition when it is filed, and if it plainly appears from the petition and its attachments the
18 petitioner is not entitled to relief, the Court must dismiss the petition.

19 Following a careful review of the petition, the Court concludes that petitioner's federal
20 habeas petition—on its face—is subject to dismissal due to a failure to exhaust state court
21 remedies. The petition plainly states that petitioner has not brought any appeal or personal
22 restraint petition to the state courts at all. Dkt. 1 at 3. Petitioner indicates that he intends not to
23 bring his claims to the state courts—state courts would never have the opportunity to consider
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2254, RULE 4 - 1

1 the habeas claims raised in his federal petition—asserting that the state courts lack jurisdiction
2 over issues that are raised under the United States Constitution. Dkt. 1 at 6-8, 10-11, 13.
3 However, this Court is statutorily prohibited from considering any federal habeas claims that
4 have not been presented and exhausted in the state courts. *See* 28 U.S.C. § 2254(b)(1). The Court
5 therefore orders the petitioner to show cause why the Court should not dismiss this federal
6 habeas corpus petition without prejudice.

7 DISCUSSION

8 A state prisoner is required to exhaust all state court remedies, by fairly presenting claims
9 of violation of federal rights before the state courts, before seeking a writ of habeas corpus. 28
10 U.S.C. § 2254(b)(1). The exhaustion requirement is a matter of comity, intended to afford the state
11 courts the “initial opportunity to pass upon and correct alleged violations of its prisoners’ *federal*
12 rights.” *Picard v. Connor*, 404 U.S. 270, 275 (1971) (emphasis added). This is appropriate,
13 because “state courts, like federal courts, are obliged to enforce federal law.” *O’Sullivan v.*
14 *Boerckel*, 526 U.S. 838, 844 (1999). To properly exhaust their federal claims, a would-be habeas
15 petitioner must finish “one complete round of the State’s established appellate review process,” up
16 to the highest state court with powers of discretionary review. *Id.*, 845.

17 A federal court must dismiss a federal habeas corpus petition if its claims are unexhausted.
18 *Coleman v. Thompson*, 501 U.S. 722, 731 (1991). This Court has the *sua sponte* authority to
19 examine the question of exhaustion at this stage of review. *Campbell v. Crist*, 647 F.2d 956, 957
20 (9th Cir. 1981) (“This court may consider whether state remedies have been exhausted even if the
21 state does not raise the issue”). Where a case remains under appeal, a habeas petition is premature.
22 *See Sherwood v. Tomkins*, 716 F.2d 632, 634 (9th Cir. 1983) (petitioner seeking federal habeas
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1 relief must await the outcome of his state court appeal); *Daniels v. Nelson*, 415 F.2d 323, 323 (9th
2 Cir. 1969) (“habeas petition, filed while [petitioner’s] state appeal was pending, is premature”).

3 Petitioner Sanderson must raise the grounds for relief contained in his habeas petition to
4 the Washington Court of Appeals and Washington Supreme Court. Petitioner contends he has
5 not presented his grounds for relief to the state courts because the state courts lack the
6 “jurisdictional authority to decide on United States Constitution matters, which are outside [its]
7 jurisdictional or statutory governing limits.” Dkt. 1 at 6. This argument fails, because 28 U.S.C. §
8 2254(b)(1) recognizes the jurisdiction of state courts to adjudicate constitutional issues, without
9 question. Federal habeas relief is available to address where the state court’s adjudication was
10 “contrary to, or an unreasonable application of, clearly established federal law, as determined by
11 the Supreme Court of the United States.” 28 U.S.C. § 2254(d)(1).

12 As the petition plainly states, petitioner has not properly exhausted his claims for relief in
13 the state courts. Even if the petitioner believes it would be futile to argue his Constitutional
14 claims to the state courts, “the apparent futility of presenting claims to state courts does not
15 constitute cause of procedural default.” *Roberts v. Arave*, 847 F.2d 528, 530 (9th Cir. 1988). The
16 petition is premature before the petitioner has filed any appeal or personal restraint petitions.
17 Dkt. 1 at 3. Therefore, the Court orders petitioner to show cause why his petition is cognizable
18 for federal habeas review and should not be dismissed without prejudice.

19 ORDER

20 Based on the foregoing discussion, the Court finds that his petition is not eligible for
21 federal habeas review. The Court **orders the petitioner to show cause** in writing why the
22 petition should not be dismissed without prejudice, to allow him to exhaust his claims in the state
23 courts. Petitioner must show cause by **July 8, 2019**. The failure to file a timely response may
24 result in the dismissal of this matter without prejudice.

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2254, RULE 4 - 3

1 Additionally, the Clerk of Court is **directed to substitute Jeffrey A. Uttecht** as the
2 Respondent in this action.¹ The Clerk of Court is also directed to update the case title.

3 Dated this 10th day of June, 2019.

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7 Theresa L. Fricke
8 United States Magistrate Judge
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22 ¹ The Court substitutes Superintendent of Coyote Ridge Corrections Center, Jeffrey Uttecht, as the respondent.
23 According to his petition, petitioner is currently confined at Coyote Ridge Corrections Center in Connell,
24 Washington. Dkt. 6 at 1. Under Rule (2)(a) of the rules governing § 2254 Cases in the United States District Courts,
“If the petitioner is currently in custody under a state-court judgment, the petition must name as respondent the state
officer who has custody.”